



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R- LLC

DATE: DEC. 11, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of pharmaceutical research and development services, seeks to employ the Beneficiary as a quality control chemist. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a foreign national for lawful permanent resident status to work in a position requiring at least a master’s degree, or a bachelor’s degree followed by five years of experience.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the Beneficiary’s possession of a master’s degree, the minimum educational requirement of the offered position.

On appeal, the Petitioner asserts that the Beneficiary’s education qualifies him for the position.

Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves a position, an employer must next submit a labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the DOL-certified job requirements of an offered position. If USCIS grants a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

II. THE EDUCATIONAL REQUIREMENTS OF THE OFFERED POSITION

A petitioner must establish a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date.¹ *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine the minimum requirements of a job opportunity. USCIS may neither ignore a certification term, nor impose additional requirements. See, e.g., *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum requirements of the offered position of quality control chemist as a U.S. master's degree or a foreign equivalent degree in chemistry or analytical chemistry, plus one year of experience.² The labor certification states that the Petitioner will not accept an alternate combination of education and experience.

The record establishes that, before the petition's priority date, an Indian university issued the Beneficiary a master's degree in chemistry. The Petitioner submitted three, independent evaluations of the Beneficiary's foreign education credentials. The evaluations all conclude that the Beneficiary has the equivalent of a U.S. master's degree in chemistry based on a combination of his degree and more than 12 years of employment experience as a research scientist and chemist. The evaluations, however, find that the Beneficiary's Indian master's degree alone (without considering work experience) is only equivalent to a U.S. baccalaureate in chemistry.

Therefore, none of the evidence submitted establishes that the Beneficiary's education equates to a U.S. master's or foreign equivalent degree required by the terms of the labor certification. As noted, the Petitioner specified on the application that it will not accept an alternate combination of education and experience, so the Beneficiary may not rely on his experience in conjunction with his education to meet the educational requirements of the position. The record therefore does not demonstrate his educational qualifications for the offered position.

On appeal, the Petitioner argues that this conclusion conflicts with USCIS guidance. The Petitioner notes that Agency officials publicly stated that, in a given field of study, Indian credentials of a three-year baccalaureate followed by a one-year postgraduate diploma and a two-year master's degree may equate to a U.S. master's degree. The Petitioner references minutes from an American Immigration Lawyers Association meeting with Nebraska Service Center (NSC) officials on April 12, 2007. Unpublished agency decisions and legal opinions are not binding, however, even when they are privately published or widely circulated. *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001). Also, the record does not indicate the Beneficiary's possession of the Indian credentials cited by NSC officials, so the Petitioner's

¹ This petition's priority date is May 25, 2017, the date the DOL accepted the accompanying labor certification application for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

² The Beneficiary's experience is not at issue.

reliance on the cited communications is misplaced. For the foregoing reasons, the Petitioner has not met its burden to establish the Beneficiary's possession of the minimum educational requirements of the offered position.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage of the offered position. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of quality control chemist as \$71,573 a year. As previously noted, the petition's priority date is May 25, 2017.

The Petitioner submitted copies of an IRS Form W-2, Wage and Tax Statement, and payroll records indicating that it paid the Beneficiary more than the annual proffered wage in 2017, the year of the petition's priority date. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay that year. Thus, in any future filings in this matter, the Petitioner must submit copies of annual reports, federal income tax returns, or audited financial statements for 2017 and, if available, 2018.

IV. CONCLUSION

The Petitioner has not demonstrated the Beneficiary's possession of the minimum educational requirements for the offered position. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of R- LLC*, ID# 1810491 (AAO Dec. 11, 2018)